

SECOND REGULAR SESSION

# HOUSE BILL NO. 2095

## 101ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE KELLY (141).

4852H.011

DANA RADEMAN MILLER, Chief Clerk

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### AN ACT

To repeal section 160.261, RSMo, and to enact in lieu thereof one new section relating to child abuse investigations at school, with a penalty provision.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 160.261, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 160.261, to read as follows:

160.261. 1. The local board of education of each school district shall clearly establish a written policy of discipline, including the district's determination on the use of corporal punishment and the procedures in which punishment will be applied. A written copy of the district's discipline policy and corporal punishment procedures, if applicable, shall be provided to the pupil and parent or legal guardian of every pupil enrolled in the district at the beginning of each school year and also made available in the office of the superintendent of such district, during normal business hours, for public inspection. All employees of the district shall annually receive instruction related to the specific contents of the policy of discipline and any interpretations necessary to implement the provisions of the policy in the course of their duties, including but not limited to approved methods of dealing with acts of school violence, disciplining students with disabilities and instruction in the necessity and requirements for confidentiality.

2. The policy shall require school administrators to report acts of school violence to all teachers at the attendance center and, in addition, to other school district employees with a need to know. For the purposes of this chapter or chapter 167, "need to know" is defined as school personnel who are directly responsible for the student's education or who otherwise interact with the student on a professional basis while acting within the scope of their

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 assigned duties. As used in this section, the phrase "act of school violence" or "violent  
19 behavior" means the exertion of physical force by a student with the intent to do serious  
20 physical injury as defined in section 556.061 to another person while on school property,  
21 including a school bus in service on behalf of the district, or while involved in school  
22 activities. The policy shall at a minimum require school administrators to report, as soon as  
23 reasonably practical, to the appropriate law enforcement agency any of the following crimes,  
24 or any act which if committed by an adult would be one of the following crimes:

- 25 (1) First degree murder under section 565.020;
- 26 (2) Second degree murder under section 565.021;
- 27 (3) Kidnapping under section 565.110 as it existed prior to January 1, 2017, or  
28 kidnapping in the first degree under section 565.110;
- 29 (4) First degree assault under section 565.050;
- 30 (5) Rape in the first degree under section 566.030;
- 31 (6) Sodomy in the first degree under section 566.060;
- 32 (7) Burglary in the first degree under section 569.160;
- 33 (8) Burglary in the second degree under section 569.170;
- 34 (9) Robbery in the first degree under section 569.020 as it existed prior to January 1,  
35 2017, or robbery in the first degree under section 570.023;
- 36 (10) Distribution of drugs under section 195.211 as it existed prior to January 1, 2017,  
37 or manufacture of a controlled substance under section 579.055;
- 38 (11) Distribution of drugs to a minor under section 195.212 as it existed prior to  
39 January 1, 2017, or delivery of a controlled substance under section 579.020;
- 40 (12) Arson in the first degree under section 569.040;
- 41 (13) Voluntary manslaughter under section 565.023;
- 42 (14) Involuntary manslaughter under section 565.024 as it existed prior to January 1,  
43 2017, involuntary manslaughter in the first degree under section 565.024, or involuntary  
44 manslaughter in the second degree under section 565.027;
- 45 (15) Second degree assault under section 565.060 as it existed prior to January 1,  
46 2017, or second degree assault under section 565.052;
- 47 (16) Rape in the second degree under section 566.031;
- 48 (17) Felonious restraint under section 565.120 as it existed prior to January 1, 2017,  
49 or kidnapping in the second degree under section 565.120;
- 50 (18) Property damage in the first degree under section 569.100;
- 51 (19) The possession of a weapon under chapter 571;
- 52 (20) Child molestation in the first degree pursuant to section 566.067 as it existed  
53 prior to January 1, 2017, or child molestation in the first, second, or third degree pursuant to  
54 section 566.067, 566.068, or 566.069;

- 55 (21) Sodomy in the second degree pursuant to section 566.061;  
56 (22) Sexual misconduct involving a child pursuant to section 566.083;  
57 (23) Sexual abuse in the first degree pursuant to section 566.100;  
58 (24) Harassment under section 565.090 as it existed prior to January 1, 2017, or  
59 harassment in the first degree under section 565.090; or  
60 (25) Stalking under section 565.225 as it existed prior to January 1, 2017, or stalking  
61 in the first degree under section 565.225;

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63 committed on school property, including but not limited to actions on any school bus in  
64 service on behalf of the district or while involved in school activities. The policy shall require  
65 that any portion of a student's individualized education program that is related to  
66 demonstrated or potentially violent behavior shall be provided to any teacher and other  
67 school district employees who are directly responsible for the student's education or who  
68 otherwise interact with the student on an educational basis while acting within the scope of  
69 their assigned duties. The policy shall also contain the consequences of failure to obey  
70 standards of conduct set by the local board of education, and the importance of the standards  
71 to the maintenance of an atmosphere where orderly learning is possible and encouraged.

72 3. The policy shall provide that any student who is on suspension for any of the  
73 offenses listed in subsection 2 of this section or any act of violence or drug-related activity  
74 defined by school district policy as a serious violation of school discipline pursuant to  
75 subsection 9 of this section shall have as a condition of his or her suspension the requirement  
76 that such student is not allowed, while on such suspension, to be within one thousand feet of  
77 any school property in the school district where such student attended school or any activity  
78 of that district, regardless of whether or not the activity takes place on district property unless:

79 (1) Such student is under the direct supervision of the student's parent, legal guardian,  
80 or custodian and the superintendent or the superintendent's designee has authorized the  
81 student to be on school property;

82 (2) Such student is under the direct supervision of another adult designated by the  
83 student's parent, legal guardian, or custodian, in advance, in writing, to the principal of the  
84 school which suspended the student and the superintendent or the superintendent's designee  
85 has authorized the student to be on school property;

86 (3) Such student is enrolled in and attending an alternative school that is located  
87 within one thousand feet of a public school in the school district where such student attended  
88 school; or

89 (4) Such student resides within one thousand feet of any public school in the school  
90 district where such student attended school in which case such student may be on the property  
91 of his or her residence without direct adult supervision.

92 4. Any student who violates the condition of suspension required pursuant to  
93 subsection 3 of this section may be subject to expulsion or further suspension pursuant to the  
94 provisions of sections 167.161, 167.164, and 167.171. In making this determination  
95 consideration shall be given to whether the student poses a threat to the safety of any child or  
96 school employee and whether such student's unsupervised presence within one thousand feet  
97 of the school is disruptive to the educational process or undermines the effectiveness of the  
98 school's disciplinary policy. Removal of any pupil who is a student with a disability is subject  
99 to state and federal procedural rights. This section shall not limit a school district's ability to:

100 (1) Prohibit all students who are suspended from being on school property or  
101 attending an activity while on suspension;

102 (2) Discipline students for off-campus conduct that negatively affects the educational  
103 environment to the extent allowed by law.

104 5. The policy shall provide for a suspension for a period of not less than one year, or  
105 expulsion, for a student who is determined to have brought a weapon to school, including but  
106 not limited to the school playground or the school parking lot, brought a weapon on a school  
107 bus or brought a weapon to a school activity whether on or off of the school property in  
108 violation of district policy, except that:

109 (1) The superintendent or, in a school district with no high school, the principal of the  
110 school which such child attends may modify such suspension on a case-by-case basis; and

111 (2) This section shall not prevent the school district from providing educational  
112 services in an alternative setting to a student suspended under the provisions of this section.

113 6. For the purpose of this section, the term "weapon" shall mean a firearm as defined  
114 under 18 U.S.C. Section 921 and the following items, as defined in section 571.010: a  
115 blackjack, a concealable firearm, an explosive weapon, a firearm, a firearm silencer, a gas  
116 gun, a knife, knuckles, a machine gun, a projectile weapon, a rifle, a shotgun, a spring gun or  
117 a switchblade knife; except that this section shall not be construed to prohibit a school board  
118 from adopting a policy to allow a Civil War reenactor to carry a Civil War era weapon on  
119 school property for educational purposes so long as the firearm is unloaded. The local board  
120 of education shall define weapon in the discipline policy. Such definition shall include the  
121 weapons defined in this subsection but may also include other weapons.

122 7. All school district personnel responsible for the care and supervision of students  
123 are authorized to hold every pupil strictly accountable for any disorderly conduct in school or  
124 on any property of the school, on any school bus going to or returning from school, during  
125 school-sponsored activities, or during intermission or recess periods.

126 8. Teachers and other authorized district personnel in public schools responsible for  
127 the care, supervision, and discipline of schoolchildren, including volunteers selected with  
128 reasonable care by the school district, shall not be civilly liable when acting in conformity

129 with the established policies developed by each board, including but not limited to policies of  
130 student discipline or when reporting to his or her supervisor or other person as mandated by  
131 state law acts of school violence or threatened acts of school violence, within the course and  
132 scope of the duties of the teacher, authorized district personnel or volunteer, when such  
133 individual is acting in conformity with the established policies developed by the board.  
134 Nothing in this section shall be construed to create a new cause of action against such school  
135 district, or to relieve the school district from liability for the negligent acts of such persons.

136 9. Each school board shall define in its discipline policy acts of violence and any  
137 other acts that constitute a serious violation of that policy. "Acts of violence" as defined by  
138 school boards shall include but not be limited to exertion of physical force by a student with  
139 the intent to do serious bodily harm to another person while on school property, including a  
140 school bus in service on behalf of the district, or while involved in school activities. School  
141 districts shall for each student enrolled in the school district compile and maintain records of  
142 any serious violation of the district's discipline policy. Such records shall be made available  
143 to teachers and other school district employees with a need to know while acting within the  
144 scope of their assigned duties, and shall be provided as required in section 167.020 to any  
145 school district in which the student subsequently attempts to enroll.

146 10. Spanking, when administered by certificated personnel and in the presence of a  
147 witness who is an employee of the school district, or the use of reasonable force to protect  
148 persons or property, when administered by personnel of a school district in a reasonable  
149 manner in accordance with the local board of education's written policy of discipline, is not  
150 abuse within the meaning of chapter 210. ~~[The provisions of sections 210.110 to 210.165~~  
151 ~~notwithstanding, the children's division shall not have jurisdiction over or investigate any~~  
152 ~~report of alleged child abuse arising out of or related to the use of reasonable force to protect~~  
153 ~~persons or property when administered by personnel of a school district or any spanking~~  
154 ~~administered in a reasonable manner by any certificated school personnel in the presence of a~~  
155 ~~witness who is an employee of the school district pursuant to a written policy of discipline~~  
156 ~~established by the board of education of the school district, as long as no allegation of sexual~~  
157 ~~misconduct arises from the spanking or use of force.~~

158 ~~11. If a student reports alleged sexual misconduct on the part of a teacher or other~~  
159 ~~school employee to a person employed in a school facility who is required to report such~~  
160 ~~misconduct to the children's division under section 210.115, such person and the~~  
161 ~~superintendent of the school district shall report the allegation to the children's division as~~  
162 ~~set forth in section 210.115. Reports made to the children's division under this subsection~~  
163 ~~shall be investigated by the division in accordance with the provisions of sections 210.145 to~~  
164 ~~210.153 and shall not be investigated by the school district under subsections 12 to 20 of this~~  
165 ~~section for purposes of determining whether the allegations should or should not be~~

166 substantiated. The district may investigate the allegations for the purpose of making any  
167 decision regarding the employment of the accused employee.

168 ~~12.]~~ 11. Upon receipt of any reports of child abuse by the children's division [~~other~~  
169 ~~than reports provided under subsection 11 of this section,~~] pursuant to sections 210.110 to  
170 210.165 which allegedly involve personnel of a school district, the children's division shall  
171 notify the superintendent of schools of the district or, if the person named in the alleged  
172 incident is the superintendent of schools, the president of the school board of the school  
173 district where the alleged incident occurred.

174 ~~[13. If, after an initial investigation, the superintendent of schools or the president of~~  
175 ~~the school board finds that the report involves an alleged incident of child abuse other than the~~  
176 ~~administration of a spanking by certificated school personnel or the use of reasonable force to~~  
177 ~~protect persons or property when administered by school personnel pursuant to a written~~  
178 ~~policy of discipline or that the report was made for the sole purpose of harassing a public~~  
179 ~~school employee, the superintendent of schools or the president of the school board shall~~  
180 ~~immediately refer the matter back to the children's division and take no further action. In all~~  
181 ~~matters referred back to the children's division, the division shall treat the report in the same~~  
182 ~~manner as other reports of alleged child abuse received by the division.~~

183 ~~14. If the report pertains to an alleged incident which arose out of or is related to a~~  
184 ~~spanking administered by certificated personnel or the use of reasonable force to protect~~  
185 ~~persons or property when administered by personnel of a school district pursuant to a written~~  
186 ~~policy of discipline or a report made for the sole purpose of harassing a public school~~  
187 ~~employee, a notification of the reported child abuse shall be sent by the superintendent of~~  
188 ~~schools or the president of the school board to the law enforcement in the county in which the~~  
189 ~~alleged incident occurred.~~

190 ~~15. The report shall be jointly investigated by the law enforcement officer and the~~  
191 ~~superintendent of schools or, if the subject of the report is the superintendent of schools, by a~~  
192 ~~law enforcement officer and the president of the school board or such president's designee.~~

193 ~~16. The investigation shall begin no later than forty eight hours after notification from~~  
194 ~~the children's division is received, and shall consist of, but need not be limited to,~~  
195 ~~interviewing and recording statements of the child and the child's parents or guardian within~~  
196 ~~two working days after the start of the investigation, of the school district personnel allegedly~~  
197 ~~involved in the report, and of any witnesses to the alleged incident.~~

198 ~~17. The law enforcement officer and the investigating school district personnel shall~~  
199 ~~issue separate reports of their findings and recommendations after the conclusion of the~~  
200 ~~investigation to the school board of the school district within seven days after receiving notice~~  
201 ~~from the children's division.~~

202           ~~18. The reports shall contain a statement of conclusion as to whether the report of~~  
203 ~~alleged child abuse is substantiated or is unsubstantiated.~~

204           ~~19. The school board shall consider the separate reports referred to in subsection 17~~  
205 ~~of this section and shall issue its findings and conclusions and the action to be taken, if any,~~  
206 ~~within seven days after receiving the last of the two reports. The findings and conclusions~~  
207 ~~shall be made in substantially the following form:~~

208           ~~(1) The report of the alleged child abuse is unsubstantiated. The law enforcement~~  
209 ~~officer and the investigating school board personnel agree that there was not a preponderance~~  
210 ~~of evidence to substantiate that abuse occurred;~~

211           ~~(2) The report of the alleged child abuse is substantiated. The law enforcement~~  
212 ~~officer and the investigating school district personnel agree that the preponderance of~~  
213 ~~evidence is sufficient to support a finding that the alleged incident of child abuse did occur;~~

214           ~~(3) The issue involved in the alleged incident of child abuse is unresolved. The law~~  
215 ~~enforcement officer and the investigating school personnel are unable to agree on their~~  
216 ~~findings and conclusions on the alleged incident.~~

217           ~~20. The findings and conclusions of the school board under subsection 19 of this~~  
218 ~~section shall be sent to the children's division. If the findings and conclusions of the school~~  
219 ~~board are that the report of the alleged child abuse is unsubstantiated, the investigation shall~~  
220 ~~be terminated, the case closed, and no record shall be entered in the children's division central~~  
221 ~~registry. If the findings and conclusions of the school board are that the report of the alleged~~  
222 ~~child abuse is substantiated, the children's division shall report the incident to the prosecuting~~  
223 ~~attorney of the appropriate county along with the findings and conclusions of the school~~  
224 ~~district and shall include the information in the division's central registry. If the findings and~~  
225 ~~conclusions of the school board are that the issue involved in the alleged incident of child~~  
226 ~~abuse is unresolved, the children's division shall report the incident to the prosecuting~~  
227 ~~attorney of the appropriate county along with the findings and conclusions of the school~~  
228 ~~board, however, the incident and the names of the parties allegedly involved shall not be~~  
229 ~~entered into the central registry of the children's division unless and until the alleged child~~  
230 ~~abuse is substantiated by a court of competent jurisdiction.~~

231           ~~21. Any superintendent of schools, president of a school board or such person's~~  
232 ~~designee or law enforcement officer who knowingly falsifies any report of any matter~~  
233 ~~pursuant to this section or who knowingly withholds any information relative to any~~  
234 ~~investigation or report pursuant to this section is guilty of a class A misdemeanor.~~

235           ~~22.]~~ **12.** In order to ensure the safety of all students, should a student be expelled for  
236 bringing a weapon to school, violent behavior, or for an act of school violence, that student

237 shall not, for the purposes of the accreditation process of the Missouri school improvement  
238 plan, be considered a dropout or be included in the calculation of that district's educational  
239 persistence ratio.

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